

REMARKS

The present response amends claim 15. Claims 15-22 remain pending in the captioned case. Claims 17-19, 21, and 22 are withdrawn. Further examination and reconsideration of the presently claimed application are respectfully requested.

Section 102 Rejection

Claims 15, 16, and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,409,489 to Sioufi (hereinafter “Sioufi”). The standard for “anticipation” is one of fairly strict identity. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art of reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP 2131. Furthermore, anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, as arranged in the claim. *W.L. Gore & Assocs. V. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). Using these standards, Applicants submit the cited art fails to disclose each and every element of the currently pending claims, some distinctive features of which are set forth in more detail below.

Sioufi does not teach a raised receiving member extending perpendicularly outward from only the second head side of a head-end portion of an implant plate. Present claim 15 specifies a raised receiving member. The raised receiving member extends perpendicularly outward from only the second head side. The second head side is that which is opposite a first head side, and the first head side is one that faces and is adapted to bear against bone. The first and second head sides, being opposite each other, terminate on lateral extents that are joined by a pair of parallel-spaced head edge surfaces. The first and second head edge sides and the pair of head edge surfaces form the head portion of an implant plate made up of a head-end portion and a shaft-end portion. The raised receiving member extends only from the head-end portion and, specifically, from only the second head side of the head-end portion – not from a shaft-end portion or any of the sides or surfaces associated with a shaft-end portion.

Support for the amendments to claim 15 are found throughout the present specification, for example, the description associated with Figs. 1A and 1B. In particular, Figs. 1A and 1B show receiving members 6 associated with head-end portion 2 of implant plate 1. There are no receiving members 6 on the shaft-end portion 3 (Specification -- Figs. 1A and 1B). Receiving members 6 extend perpendicularly outward from a second head side opposite the first head side, wherein the first head side faces and is adapted to bear against bone 4 (Specification -- Fig. 1B). The lateral extents of head-end portion are joined by a pair of parallel-spaced head edge surfaces, with the central axis of aperture 7 extending substantially parallel to the lateral extents of the first and second head sides (Specification -- Fig. 1A).

Contrary to present claim 15, eyelets 88 in Sioufi extend from an outer edge of the side of compression plate 73 facing toward the bone or femur M (Sioufi -- Figs. 8A, 8B, 10A, and 10B). Clearly, eyelets 88 in Sioufi are situated on the side of the implant plate and do not extend perpendicularly outward from a head-end portion, much less a second head side opposite a first head side facing and adapted to bear against femur M. In order for Sioufi to meet the limitations of present claim 15, eyelets 88 must be extend perpendicularly from the side of compression plate 73 opposite the side in which compression plate 73 bears against bone.

Sioufi does not teach a receiving member having a circular enclosed inner diameter that surrounds a central axis extending substantially parallel to the lateral extents of the first and second head sides. Present claim 15 not only describes a receiving member, but also a receiving member having a circular enclosed inner diameter. That inner diameter forms or surrounds a central axis that extends parallel to the lateral extents of the first and second head sides, as shown more clearly in Fig. 1A of the present specification. For example, present Fig. 1A illustrates an aperture 7 having a central axis (shown by a shortened line through aperture 7) (Specification -- Fig. 1A). The shortened line of at least one aperture 7 of at least one receiving member 6 is shown to be parallel to the lateral extents of the first and second head sides.

Contrary to present claim 15, instead of the apertures of eyelets 88 forming a central axis parallel to the lateral extents of the present first and second head sides, the central axis of eyelets 88 extend perpendicular to the lateral extents and, more specifically, a line which forms the lateral extents of the first and second head sides (Sioufi -- Fig. 8A). In order for Sioufi to meet the requirements of claim 15, eyelets 88 must be rotated 90° -- however, nowhere is there any suggestion that eyelets 88 can be rotated.

For at least the foregoing reasons, Applicants assert that claim 15 and claims dependent therefrom are not anticipated by the cited art. Accordingly, Applicants respectfully request removal of this rejection.

Request for Consideration of Withdrawn Claims 17-19, 21, and 22

Pursuant to the provisional election of the Species I directed to the embodiments of the implant plate (i.e., the species described in Figs. 1A, 3A, 5, 13, 14, and 15) noted in a previous response to an Office Action Mailed November 10, 2005, Applicant respectfully requests that upon allowance of a generic claim (i.e., claim 15), that the species set forth in claims 17-19, 21, and 22 be allowed under 37 C.F.R. § 1.141(a).

CONCLUSION

The present amendment and response is believed to be a complete response to the issues raised in the Office Action mailed August 21, 2006. In view of the remarks herein, Applicants believe pending claims 15-22 are in condition for allowance. If the Examiner has any questions, comments or suggestions, the undersigned attorney earnestly requests a telephone conference.

No fees are required for filing this amendment; however, the Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment, to Daffer McDaniel, LLP Deposit Account No. 50-3268.

Respectfully submitted,
/Kevin L. Daffer/
Kevin L. Daffer
Reg. No. 34,146
Attorney for Applicant(s)

Customer No. 35617
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